

ORIGINAL

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FILED
Clerk
District Court

JUN - 8 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

AE JA ELLIOT-PARK,

Plaintiff,

vs.

JARROD MANGLONA, MICHAEL
LANGDON, ANTHONY MACARANAS,
DEPARTMENT OF PUBLIC SAFETY and
JUAN DOES 1-4, NORBERT DUENAS
BABAUTA,

Defendants.

) CIVIL ACTION NO. 07 - 0021
)
)
)
) COMPLAINT

Plaintiff, by and through counsel, hereby files her Complaint and in support thereof
alleges as follows:

I.
PARTIES

1. Plaintiff Ae Ja Elliot-Park ("Mrs. Elliot-Park"), is now, and at all times
mentioned herein was a citizen of Korea and a resident of Saipan, Commonwealth of the
Northern Mariana Islands ("CNMI") and is racially and ethnically from Korea and is not of
CNMI descent.

1 2. Defendant Norbert Duenas Babauta ("Defendant Babauta") on information and
2 belief, was at all times relevant to this matter, a citizen of and a resident of Saipan, CNMI and
3 is of NMI or Micronesian descent.

4
5 3. Defendant Jarrod Manglona ("Defendant Manglona") on information and belief,
6 was at all times relevant to this matter, a citizen of and a resident of Saipan, CNMI and an
7 employee of the Department of Public Safety acting within the scope and course of his
8 employment and under the color of state law and is of NMI or Micronesian descent.

9
10 4. Defendant Michael Langdon ("Defendant Langdon") on information and belief,
11 was at all times relevant to this matter, a citizen of and a resident of Saipan, CNMI and an
12 employee of the Department of Public Safety acting within the scope and course of his
13 employment and under the color of state law and is of NMI or Micronesian descent.

14
15 5. Defendant Anthony Macaranas ("Defendant Macaranas") on information and
16 belief, was at all times relevant to this matter, a citizen of and a resident of Saipan, CNMI and
17 an employee of the Department of Public Safety acting within the scope and course of his
18 employment and under the color of state law and is of NMI or Micronesian descent.

19
20 6. Juan Doe Defendants 1-4 on information and belief, were at all times relevant to
21 this matter, citizens of and residents of Saipan, CNMI and employees of the Department of
22 Public Safety acting within the scope and course of their employment and under the color of
23 state law and are of NMI or Micronesian descent.

24
25 7. Defendant the Commonwealth Government is named and sued through its
26 instrumentality Defendant Department of Public Safety ("DPS") which is now, and at all times
27 mentioned herein, a governmental entity operating as a police department for the citizens of
28 CNMI, with its principal place of business in Saipan .

1 8. At all relevant times all Defendants except Babauta were acting as agents and/or
2 co-conspirators of one another.

3
4 **II.**
5 **JURISDICTION**

6 9. This action arises under the Constitution of the United States, particularly the
7 Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, and under
8 the laws of the United States. This action is brought pursuant to 28 U.S.C. §1343 in that it
9 arises under 42 U.S.C. §§1983 and 1985(3). The Court also has supplemental jurisdiction over
10 the various state law claims pursuant to 28 U.S.C. § 1367.

11
12 10. Venue is proper in this Court under 28 U.S.C. §1391(a). Defendants are
13 residents of and/or are present in the CNMI. Additionally the facts giving rise to this lawsuit
14 occurred within this District.

15
16 **III.**
17 **FACTUAL ALLEGATIONS**

18 11. On February 12, 2006, Mrs. Elliot-Park with her baby in the back seat was
19 driving her white Hyundai Elantra (the "Hyundai car") south along 16 Highway Papago.

20
21 12. She was meeting her husband for dinner at the Pacific Islands Club. As it was
22 around 6:30 p.m., the sky was still light, and the streets were dry.

23
24 13. Defendant Babauta, a person of NMI descent, was driving a red Toyota Tacoma
25 truck (the "pick-up truck") north on 16 Highway Papago. On information and belief, his wife
26 was sitting in the passenger seat, while their four children ages 8,11,13 and 14 sat in the bed of
27 the truck.
28

1 14. Babauta was drunk.

2
3 15. Babauta's intoxication had impaired his driving and he was swerving.

4
5 16. At around 6:30 pm, Babauta sped through a turn, crossing over into oncoming
6 traffic and crashing head on into Mrs. Elliot-Park's car causing her greivous bodily injuries and
7 property damage.

8
9 17. On information and belief, at or around 6:50 p.m., Defendant Manglona was
10 driving on 16 Highway Papago when he saw that traffic was halted around a car accident.

11
12 18. He called into DPS Central Command Center to report a traffic accident and
13 request an ambulance and back up.

14
15 19. Defendant Manglona approached both cars to check on the passengers.

16
17 20. On information and belief, in the bed of Babauta's truck, were empty beer cans.

18
19 21. Babauta, was teetering, slurring his words, reeked of alcohol and had bloodshot
20 eyes.

21
22 22. Defendant Manglona began conducting initial interviews of the witnesses,
23 drivers and passengers to ascertain the cause of the accident:

24
25 a) Mrs. Elliot-Park stated that the truck had swerved into her lane, hitting
26 her car head-on.

1 b) Babauta stated that he had "blackened out" while driving which had caused
2 him to swerve into oncoming traffic.

3
4 23. After viewing Babauta's drunkenness and having probable cause to believe
5 Babauta was under the influence of alcohol, Defendant Manglona failed to conduct any field
6 sobriety tests or do anything else to verify if Babauta was intoxicated or not.

7
8 24. Shortly thereafter, Defendants Macaranas, Langdon and the medics arrived.
9 While the medics attended to the injured parties, Defendants Macaranas and Langdon spoke to
10 both drivers and then directed traffic.

11
12 25. Again, although both Defendants Macaranas and Langdon were able to observe
13 Babauta's bloodshot eyes, slurred words, and stagger, and having probable cause to believe
14 Babauta was under the influence of alcohol, both failed to conduct any field sobriety tests.

15
16 26. Upon arriving at the hospital, Dr. Thomas Austin examined both drivers and
17 passengers.

18
19 27. Mrs Elliot-Park was treated for a fractured right wrist and right leg, and
20 lacerations on her right leg and right eyelid.

21
22 28. Upon observing and talking with Babauta, Dr. Austin concluded that Babauta
23 was visibly intoxicated.

24
25 29. Dr. Austin walked a police officer over to Babauta and stated that the man was
26 drunk. At this time, that officer's identity is not conclusively established and so is labeled
27 "Juan Doe 1".
28

1 30. Dr. Austin also informed Defendant Manglona that Babauta was drunk.

2
3 31. However having probable cause to believe Babauta was under the influence of
4 alcohol, neither the DPS officer that Dr. Austin had walked over to Babauta nor Defendant
5 Manglona conducted field sobriety tests.

6
7 32. Around that time, Mark Williams arrived at the hospital after hearing of Mrs.
8 Elliot-Park's accident.

9
10 33. Mr. Williams viewed Babauta passed out on a hospital bed.

11
12 34. Mr. Williams was told by both Mrs. Elliot-Park and her husband that the other
13 driver was drunk.

14
15 35. When Mr. Williams told Defendant Manglona that Babauta was drunk, the
16 Defendant informed him that Mrs. Elliot-Park had confused him with a "good Samaritan" at
17 the scene of the accident.

18
19 36. Since none of the Defendants took action on the basis of medical opinions and
20 eye witnesses, Babauta was released from the hospital.

21
22 37. Defendants chose not to perform any sobriety test or otherwise properly
23 investigate Babauta's intoxication because of Babauta's national and/or ethnic origin and the
24 national and/or ethnic origin of Mrs. Elliot Park.

1 38. At some point during the evening or early night of February 12, 2006,
2 Defendants Manglona, Langdon and Macaranas, and perhaps others, formed a conspiracy to
3 destroy evidence and obstruct justice and to prevent the prosecution of Babauta.

4
5 39. Defendant Macaranas observed Babauta leaving the hospital to join family
6 members who were waiting for him in the parking lot, drinking beers in the bed of a truck.

7
8 40. At approximately 12:30 a.m., February 13, 2006, when Dr. Austin discovered
9 that Babauta was allowed to leave the hospital without being charged with a DUI, he called the
10 DPS to complain. He stated that he had informed all officers of the Babauta's intoxication and
11 that none had responded to his diagnosis.

12
13 41. Ignoring Dr. Austin's medical assessment, Babauta was never charged with
14 driving under the influence.

15
16 42. Later that evening, Defendant Macaranas was called to assist another car
17 accident that night. The at fault driver in this accident was a person not of NMI descent.

18
19 43. In following police protocol, on information and belief, Defendant Macaranas
20 performed a sobriety field test to ascertain the driver's level of intoxication and arrested that
21 driver for Driving while intoxicated .

22
23 44. Upon information and belief it is alleged that after the accident Defendants
24 Manglona, Langdon and Macaranas acted alone or in concert with others in failing to arrest
25 Babauta, a visibly intoxicated driver.

1 45. The actions of Defendants Manglona, Langdon and Macaranas reflect
2 Defendant DPS' practices, procedures, regulations and/or customs to selectively enforce the
3 laws of the CNMI.

4
5 46. In pertinent part, Defendants selectively enforce those laws, and policies and
6 procedures that relate to driving under the influence of alcohol and the investigation thereof,
7 based upon race and/or national origin.

8
9 47. Thereafter, DPS appointed Juan Does 2 through 4 to investigate why Babauta
10 had not been arrested or at least given a field sobriety or blood alcohol test.

11
12 48. As part of their "investigation", Does 2-4 interviewed Dr. Austin and during the
13 "interview" tried to intimidate and harass Dr. Austin into recanting his statement or to
14 otherwise not assist in the investigation and prosecution of Defendants.

15
16 49. Sometime later, Edward Buckingham was appointed to investigate this matter.
17 On information and belief, Defendants and others conspired to destroy evidence and obstruct
18 justice and to prevent the prosecution of Babauta and Defendants.

19
20 50. In doing the act alleged above, each of the above-named Defendants acted as the
21 agent for and on behalf of the other Defendants, at all times material, within the course and
22 scope of their respective agencies and in furtherance of the above-described conspiracy.

23
24 51. In doing the acts described above, Defendants attempted to impede, obstruct or
25 defeat the due course of justice in the CNMI with the intent to injure Plaintiff, to deny Plaintiff
26 the right of equal protection of laws within the meaning of 42 U.S.C. §1985(2) and (3). Said
27 actions were due to Plaintiff's race and ethnic origin being not of Northern Marianas Island
28 and/or Micronesian descent.

1 52. Plaintiff has been injured by the foregoing acts of the Defendants, and has
2 incurred pecuniary and other losses including emotional distress, and is entitled to damages.

3
4 53. The foregoing acts of Defendants were taken under color of the law of the
5 CNMI.

6
7 54. The foregoing acts of the Defendants were willful and malicious, taken in bad
8 faith and for oppressive reasons.

9
10 **IV.**
11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**
13 **(Violation of Equal Protection Under 42 U.S.C. §1983)**

14 55. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
15 1 through 54 above.

16
17 56. This First Cause of Action is pled by Plaintiff against Defendants Macaranas,
18 Langdon and Manglona and Juan Does 1-4 in their individual capacity.

19
20 57. The three Defendants acted in reckless disregard as to the civil rights of Mrs.
21 Elliot-Park.

22
23 58. The Defendants' failure to follow DPS policies and procedures in accordance
24 with investigating and arresting intoxicated drivers and Defendants' selective enforcement of
25 those policies and procedures based on the ethnic and/or national origin of the perpetrator or
26 victim caused the Plaintiff to be deprived of her equal protection under the law.

1 59. The conduct of the Defendants, as described herein, resulted in financial and
2 emotional damage to Mrs. Elliot-Park, entitling her to damages pursuant to 42 U.S.C. § 1983,
3 including punitive damages and attorneys' fees in an amount to be proven at trial.

4
5 **SECOND CAUSE OF ACTION**
6 **(Violation of Due Process under 42 U.S.C. § 1983)**

7 60. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
8 1 through 54 above.

9
10 61. This Second Cause of Action is pled by Plaintiff against the Defendants
11 Manglona, Langdon and Macaranas and Juan Does 1-4.

12
13 62. Defendants actions were "deliberately indifferent" when they failed to take
14 action on the blatantly intoxicated Babauta.

15
16 63. The Defendants' "deliberately indifferent" conduct, as described herein, resulted
17 in Mrs. Elliot being deprived of her right to a fair trial against Babauta, and to restitution and
18 therefore deprived her of her right to due process under the Fourteenth Amendment of the
19 United States Constitution.

20
21 **THIRD CAUSE OF ACTION**
22 **(Violation Of Civil Rights Under The CNMI Constitution)**

23 64. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
24 1 through 54, 56 through 59, and 61 through 63 above.

25
26 65. This Third Cause of Action is pled by Plaintiff against all Defendants except
27 Babauta.

1 66. The actions of the Defendants deprived Mrs. Elliot-Park of right guaranteed by
2 the Constitution of the Northern Mariana Islands, including, but not limited to her right under
3 Article I § 5 to due process of law and her right under Article I § 6 to equal protection of the
4 law.

5
6 67. The conduct of the Defendants, as described herein resulted in financial and
7 emotional damage to Mrs. Elliot-Park, entitling her to damages pursuant to 42 U.S.C. § 1983,
8 including punitive damages and attorneys' fees in an amount to be proven at trial.

9
10 **FOURTH CAUSE OF ACTION**
11 **(Conspiracy To Violate Civil Rights Under 42 U.S.C. § 1985)**

12 68. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
13 1 through 54, 56 through 59, 61 through 63, and 65 through 67 above.

14
15 69. This Fourth Cause of Action is pled by Plaintiff against Defendant DPS.

16
17 70. DPS through its officers acted in reckless disregard as to the civil rights of Mrs.
18 Elliot-Park by failing to enforce and allow its employees to selectively enforce established
19 policies and/or procedures and CNMI law that resulted in the violation of her civil rights based
20 upon her lack of being of NMI and/or Micronesian descent.

21
22 71. DPS's custom of selective enforcement of policies and/or procedures depending
23 upon the ethnicity and/or nationality of those involved, violated Mrs. Elliot-Park's civil rights.

24
25 72. The customs of DPS permitted the Defendants Manglona, Langdon and
26 Macaranas' failure to perform sobriety tests, follow the medical opinion of Dr. Austin and
27
28

1 arrest Babauta for driving under the influence. Furthermore, the Defendants acted in concert to
2 selectively enforce the laws of the CNMI.

3
4 73. Furthermore, the DPS's selective enforcement of policies and laws was
5 consistent with Defendant Macaranas' decision to perform a sobriety test on a person not of
6 NMI descent involved in a similar accident that same night.

7
8 74. In so conspiring to selectively enforce the laws of the CNMI based upon race
9 and/or national origin, the actions of the Defendants caused Mrs. Elliot-Park to suffer injury
10 and damages pursuant to 42 U.S.C. § 1985, and she is therefore entitled to damages in an
11 amount to be proven at trial.

12
13 **FIFTH CAUSE OF ACTION**
14 **(Conspiracy to Obstruct Justice)**

15 75. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
16 1 through 54, 56 through 59, 61 through 63, 65 through 67, and 70 through 74 above.

17
18 76. This Fifth Cause of Action is pled by Plaintiff against all Defendants except
19 Babauta.

20
21 77. Defendants' actions and conspiracy violated 42 U.S.C. § 1985(3) and
22 proximately caused Plaintiff to suffer a lack of a trial against Babauta, her right to restitution
23 and emotional distress and caused Plaintiff to incur substantial attorney fees to secure her civil
24 rights in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
(Intentional Infliction Of Emotional Distress)

78. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs 1 through 54, 56 through 59, 61 through 63, 65 through 67, 70 through 74, and 76 through 77 above.

79. This Sixth Cause of Action is pled by Plaintiff against all Defendants.

80. The acts of the Defendants as described above, were done willfully, maliciously outrageously, deliberately and purposefully with the intention to inflict emotional distress upon Mrs. Elliot-Park.

81. In the alternative, these acts were done in reckless disregard of the probability of causing Mrs. Elliot-Park emotional distress.

82. In either event, these acts did in fact result in severe and extreme emotional distress, and she is therefore entitled to damages including punitive damages in amounts to be proven at trial.

SEVENTH CAUSE OF ACTION
(Negligent Infliction Of Emotional Distress)

83. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs 1 through 54, 56 through 59, 61 through 63, 65 through 67, 70 through 74, 76 through 77, and 79 through 82 above.

84. This Seventh Cause of Action is pled by Plaintiff against all the Defendants.

1 85. The conduct of the Defendants caused Mrs. Elliot-Park severe anxiety that
2 continues to this date, making her constantly apprehensive and fearful and has interfered with
3 her ability to recover from her physical injuries as well as caused her loss of enjoyment of life.

4
5 86. Having resulted in such severe and extreme emotional distress, the actions of the
6 Defendants have caused Mrs. Elliot-Park damages for which she is entitled to compensation in
7 amounts to be proven at trial.

8
9 **EIGHTH CAUSE OF ACTION**
10 **(Negligence)**

11 87. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
12 1 through 54, 56 through 59, 61 through 63, 65 through 67, 70 through 74, and 76 through 77
13 above.

14
15 88. Defendants Manglona, Langdon and Macaranas and Doe Defendants 1-4 had a
16 duty to follow basic police procedures in investigating traffic accidents and allegations of driving
17 while intoxicated and not to be influenced by the ethnicity or national origin of any person
18 involved and not to conspire to obstruct justice.

19
20 89. Defendants breached this duty proximately causing Plaintiff to suffer injury and
21 damages in an amount to be proven at trial.

22
23 **NINTH CAUSE OF ACTION**
24 **(Violation of Civil Rights Under CNMI Constitution)**

25
26 89. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
27 1 through 54, 56 through 59, 61 through 63, 65 through 67, 70 through 74, and 76 through 77
28 above.

1
2 90. This Ninth Cause of Action is pled by Plaintiff against all Defendants except
3 Babauta.

4
5 91. The actions of Defendants Manglona, Langdon and Macaranas and Doe
6 Defendants and DPS in failing to properly train and supervise the police and corrections officers
7 of DPS deprived Plaintiff of rights guaranteed by the Constitution of the Northern Mariana
8 Islands, including but not limited to her right under Article I, Section 5 to due process of law,
9 equal protection under Article 1, Section 6 and her right of individual privacy under Article I,
10 Section 10.

11
12 92. The actions of Defendants caused Plaintiff to suffer injury and damages, and she
13 is therefore entitled to damages in an amount to be proven at trial including attorney's fees.

14
15 **TENTH CAUSE OF ACTION**
16 **(Negligence)**

17 93. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
18 1 through 54, 56 through 59, 61 through 63, 65 through 67, 70 through 74, and 76 through 77
19 above.

20
21 94. This Tenth Cause of Action is pled by Plaintiff against Defendant DPS.

22
23 95. DPS had a duty to train, supervise and instruct its officers not to selectively
24 enforce DPS' procedures, policies, or CNMI laws or to form conspiracies to obstruct justice.

25
26 96. DPS breached this duty.

1 97. DPS' conduct was a substantial factor in bringing about injuries and damages to
2 Plaintiff.

3
4 98. At all relevant times, Plaintiff acted reasonably under the circumstances.

5
6 99. DPS' breach of the duty of care was the cause in fact and the proximate cause of
7 the injury and damage to her, entitling her to damages in an amount to be proven at trial.

8
9 **ELEVENTH CAUSE OF ACTION**
10 **(Negligence)**

11 100. Plaintiff repeats and realleges, and incorporates herein by reference, paragraphs
12 1 through 56 above.

13
14 101. This Eleventh Cause of Action is pled by Plaintiff against Defendant Babauta
15 only.

16
17 102. At all relevant times, Defendant Babauta negligently and carelessly operated the
18 pick-up truck so this his vehicle collided with Plaintiff's Hyundai car (the "accident")
19 proximately causing Mrs. Elliot Park's physical injuries requiring hospitalization and past and
20 future medical care, damage to her vehicle, lost wages, pain and suffering, and loss of
21 enjoyment of life and other injuries and damages.

22
23 103. At all relevant times, Mrs. Elliot Park exercised all due care and caution for her
24 safety and the safety of others.

25
26 104. Defendant Babauta at all relevant times acted with deliberate disregard and
27
28

reckless indifference to the safety of others proximately causing the accident and Mrs. Elliot Park's injuries and damages complained of herein in an amount to be proven at trial.

**V.
PRAYER**

WHEREFORE, Plaintiff prays for relief as follows:

- a. For general, consequential and compensatory damages.
- b. For punitive damages in an amount to be proven at trial.
- c. For prejudgment interest as allowed by law.
- d. For attorney fees and costs of suit.
- e. For such other and further relief as the Court may deem appropriate.

Date: June 7, 2007.

O'CONNOR BERMAN DOTTS & BANES
Attorneys for Plaintiff Ae Ja Elliot-Park

By: 

George L. Hasselback, Esq.

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